MONTANA LEGISLATIVE HISTORY

Chapter 616 19 1987

Bill H 703 S _____ Original bill & history ✓ C

H. Committee on taxation			S. Committee on taxation		
Hearing Date(s)	2/19	C	Hearing Date(s)	3/20	C
	3/6	C		4/10	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

4/15 SIGNED BY PRESIDENT

4/15 TRANSMITTED TO GOVERNOR
4/20 SIGNED BY GOVERNOR
CHAPTER NUMBER 573 EFFECTIVE DATE: 4/20/87

HB 703 INTRODUCED BY GILBERT, ET AL.
PROVIDE FOR WATER'S-EDGE UNITARY COMBINATION METHOD OR NEW INVESTMENT CHOICE

2/11 INTRODUCED
2/11 REFERRED TO TAXATION
2/11 FISCAL NOTE REQUESTED
2/17 FISCAL NOTE RECEIVED
2/19 HEARING
3/06 COMMITTEE REPORT--BILL PASSED
3/10 2ND READING PASSED 87 11
3/11 3RD READING PASSED 85 12

TRANSMITTED TO SENATE
3/14 REFERRED TO TAXATION
3/20 HEARING
4/11 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
4/14 2ND READING CONCURRED AS AMENDED 43 7
4/14 3RD READING CONCURRED 43 7

RETURNED TO HOUSE WITH AMENDMENTS
4/16 2ND READING AMENDMENTS CONCURRED 93 1
4/17 3RD READING AMENDMENTS CONCURRED 91 5
4/21 SIGNED BY SPEAKER
4/22 SIGNED BY PRESIDENT

4/22 TRANSMITTED TO GOVERNOR
4/27 SIGNED BY GOVERNOR
CHAPTER NUMBER 616 EFFECTIVE DATE: 10/01/87

HB 704 INTRODUCED BY GIACOMETTO, ET AL.
REQUIRE ATTORNEY FEES TO BE PAID BY LOSING PARTY IN CERTAIN CIVIL CASES

2/11 INTRODUCED
2/11 REFERRED TO JUDICIARY
2/17 HEARING
2/23 TABLED IN COMMITTEE

HB 705 INTRODUCED BY PHILLIPS
EXEMPT FROM INCOME TAX ARMED FORCES SALARY OF RESIDENTS IN REGULAR SERVICE

2/11 INTRODUCED
2/11 REFERRED TO TAXATION
2/11 FISCAL NOTE REQUESTED
2/16 FISCAL NOTE RECEIVED
2/20 HEARING
2/23 COMMITTEE REPORT--BILL PASSED
3/02 2ND READING PASSED 82 9
3/03 3RD READING PASSED 88 11

TRANSMITTED TO SENATE
3/04 REFERRED TO TAXATION
3/21 HEARING
3/23 COMMITTEE REPORT--BILL CONCURRED
3/27 2ND READING CONCUR MOTION FAILED 20 24
4/02 2ND READING CONCURRED AS AMENDED 29 20

STATUS SHEET

50th LEGISLATIVE SESSION

TAXATION COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURR IN AS AMENDE DATE
666	2/9/87	2/19/87		2/20/87							
667	2/9/87	2/19/87	3/16/87	tabled							
678	2/9/87	2/19/87	2/20/87			3/6/87					
678	3/3/87					3/16/87					
688	2/10/87	2/18/87	2/20/87	tabled							
700	2/11/87	2/17/87				3/12/87					
701	2/11/87	2/18/87	3/17/87	tabled							
703	2/11/87	2/19/87		3/6/87							
705	2/11/87	2/20/87		2/20/87							
707	2/11/87	3/4/87	3/16/87	tabled							
709	2/11/87	2/20/87				3/16/87					
714	2/11/87	3/5/87		3/6/87							
716	2/11/87	2/19/87				2/20/87					
717	2/11/87	2/23/87				2/23/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

LC 0903/01

House BILL NO. 703

INTRODUCED BY Gilbert Bergan Hirsch Mercer Smith Brown Dave Brown Sanden Smith Walker Baker Bengtson

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE CORPORATE LICENSE OR INCOME TAX AND TO ALLOW CORPORATE LICENSE OR INCOME TAXPAYERS TO APPORTION INCOME FOR CORPORATE LICENSE OR INCOME TAX PURPOSES UNDER THE WATER'S-EDGE UNITARY COMBINATION METHOD, THE NEW INVESTMENT TAXPAYER ELECTION, OR CONTINUE TO FILE UNDER CURRENT LAW AS PROVIDED FOR IN TITLE 15, CHAPTER 31, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Affiliated corporation" means a United States parent corporation and any subsidiary of which more than 50% of the voting stock is owned directly or indirectly by another corporate member of the water's-edge combined group.

(2) "United States" means the 50 states of the United States and the District of Columbia.

(3) "Water's-edge combined group" means all corporations or entities included in the election of a taxpayer under [section 2].

Section 2. Water's-edge election. Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(1) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in sections 1501 through 1505 of the Internal Revenue Code that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1), the 80% stock ownership requirements of section 1504 of the Internal Revenue Code must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(2) domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code;

(3) export trade corporations, as described in sections 970 and 971 of the Internal Revenue Code;

(4) foreign corporations deriving gain or loss from

INTRODUCED BILL
HB 703

Montana Legislative Council

disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code;

(5) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States.

Section 3. Apportionment factors. For purposes of [section 2(1) and (5)], the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

Section 4. Water's-edge election period -- consent. (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter subsequent to the water's-edge election is considered to have consented to the election.

(2) Each water's-edge election must be for 3-year

renewable periods, except as follows:

(a) No water's-edge election may be made for an income year beginning before [the effective date of this act].

(b) A water's-edge election may be changed by a taxpayer prior to the end of each 3-year period only with the permission of the department of revenue. In granting a change of election, the department shall impose reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

Section 5. Treatment of dividends. For purposes of [sections 1 through 6], dividends must be treated as follows:

(1) Dividends received from corporations incorporated outside the United States, to the extent taxable, are considered income subject to apportionment.

(2) The after-tax net income of United States corporations excluded from eligibility as affiliated corporations under [section 2(1)] and possession corporations described in sections 931 through 934 and 936 of the Internal Revenue Code are considered dividends received from corporations incorporated outside the United States.

(3) Amounts included in income under sections 951 through 962 and 964 of the Internal Revenue Code are

considered dividends from corporations incorporated outside the United States.

(4) Eighty-five percent of all dividends apportionable under this section must be excluded from income subject to apportionment.

(5) "Deemed" distributions, as set forth in section 78 of the Internal Revenue Code, and corresponding amounts with respect to dividends considered received under subsection (2) of this section must be excluded from the income of the water's-edge combined group.

(6) The dividends apportionable under this section are in lieu of any expenses attributable to dividend income.

(7) A dividend from a corporation required to be combined in the water's-edge combined group must be eliminated from the calculation of apportionable income.

Section 6. Domestic disclosure spreadsheet. The department of revenue may require taxpayers making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

Section 7. New investment taxpayer election. Notwithstanding any other provisions of law, if a taxpayer subject to the taxes imposed under this chapter adds to its Montana property and/or payroll by $1 million over the previous tax year, the taxpayer may apportion its income on a separate company reporting basis for a period of 5 tax years or any part thereof. This election does not affect how corporations affiliated with the electing taxpayer file their Montana corporate license or income tax returns.

Section 8. Codification instruction. Sections 1 through 7 are intended to be codified as an integral part of Title 15, chapter 31, part 3, and the provisions of Title 15, chapter 31, part 3, apply to sections 1 through 7, except as otherwise provided.

Section 9. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 10. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Applicability. This act applies to taxable

years beginning after December 31, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB703, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to clarify the corporate license or income tax and to allow taxpayers to apportion income for corporate license or income tax purposes under the water's-edge unitary combination method, the new investment taxpayer election, or continue to file under current law as provided in Title 15, Chapter 31, MCA; and providing an applicability date.

ASSUMPTIONS:

1. The Revenue Estimating Advisory Council's estimates of corporate license tax collections provide the basis for comparison.
2) Corporate license tax collections will be $53,063,000 in FY88 and $58,995,000 in FY89.
3) Financial institutions will pay 11.57 percent of the total tax under current law. The proposal will have no effect on the payment of these corporations.
4) Based on a detailed examination of returns filed by multistate/multinational taxpayers in FY86, it is estimated the proposal would reduce their taxes by $3,848,000 when in effect for a full year. Less than 50 corporations would receive the bulk of the savings. The applicability date of the proposal, however, will affect only 60 percent of FY89 collections.
5) It is assumed that corporations that would be affected by the proposal do not change the timing or amount of their dividend payments in response to the delayed applicability date of the proposal. These reactions would increase the revenue impact of the proposal over the estimated amount.
6) The estimated impact does not include the potential impact of the new investment taxpayer election, since it depends on the amount of future investment by certain taxpayers and the income generated from the specific investment.

FISCAL IMPACT:

Revenue Impact:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Corporate License Tax	N/A	N/A	N/A	$58,995,000	$56,686,200	($2,308,800)*

*The loss represents 60 percent of a full year's impact as a result of the applicability date of the proposal.

David L. Hunter DATE 2/17/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Bob Gilbert DATE
BOB GILBERT, PRIMARY SPONSOR

Fiscal Note for HB703, as introduced.

HB 703

8

Fund Information:

	FY89		
	Current Law	Proposed Law	Difference
General Fund	$34,261,760	$32,784,128	($1,477,632)
Foundation Program	13,383,500	12,806,300	(577,200)
Debt Service Fund	5,888,740	5,634,772	(253,968)
Local Governments	5,461,000	5,461,000	0

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
The impact in FY90 is estimated to decrease revenues by $3,848,000, since the proposal will apply to a full year of returns.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:
The proposal includes domestic international sales corporations (DISC's) in the definition of an affiliated group. Yet, these corporations are exempt from taxation by other sections of Title 15.

MINUTES OF THE MEETING
TAXATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 19, 1987

The meeting of the Taxation Committee was called to order by Chairman Ramirez on February 19, 1987, at 8 a.m. in Room 312B of the State Capitol.

ROLL CALL: All members were present. Also present was Dave Bohyer, Researcher, Legislative Council.

CONSIDERATION OF HOUSE BILL NO. 743: Rep. Walter Sales, House District #76, sponsor of HB 743, said the bill would cut the sale of vacant lots down to twelve months.

PROPONENTS OF HOUSE BILL NO. 743: John Lawton, City of Billings, explained that the bill addresses delinquent SID's, because although many subdivisions fail, interest must still be paid. He said, right now, taxpayers end up picking up these costs.

Alec Hansen, Montana League of Cities and Towns, said HB 743 is a priority for organization this session, to protect taxpayers in this situation.

Chuck Stearns, Finance Officer, City of Missoula, told the Committee he supports the bill, and said Missoula just took over tax deeds for 61 lots in failed subdivisions, amounting to $825,000. He explained that the 36 month period is actually stretched out to 4 years, as November tax bills are not certified until July of the following year.

OPPONENTS OF HOUSE BILL NO. 743: There were no opponents of the bill.

QUESTIONS ON HOUSE BILL NO. 743: Chairman Ramirez asked for an explanation of how the bill works. Rep. Sales replied that when a developer can't make payments, the city can take tax title and allow a twelve month redemption period instead of the current 36 month period.

Rep. Asay asked if declarations of future payments would be due immediately. Rep. Sales replied that after one installment became delinquent, a taxing entity could call the SID delinquent.

Chairman Ramirez asked if, under present law, there were not an acceleration provision. Chuck Stearns replied that the City of Missoula already has this power, which is provided for on page 2, line 16 of the bill.

taxes to the payment of bonds issued to finance urban renewal projects or costs thereof.

PROPONENTS OF HOUSE BILL NO. 666: John Lawton, City of Billings, stated his support of the bill.

OPPONENTS OF HOUSE BILL NO. 666: There were no opponents of the bill.

QUESTIONS ON HOUSE BILL NO. 666: Rep. Raney asked what other sources of revenue could be pledged. Rep. Ramirez replied it could be just about any, other than property tax.

CLOSING ON HOUSE BILL NO. 666: Rep. Ramirez closed without comment.

CONSIDERATION OF HOUSE BILL NO. 703: Rep. Bob Gilbert, House District #22, said the bill would clarify corporate license or income tax under the water's-edge unitary tax method. He explained the bill is bi-partisan, non-partisan and read read from a prepared statement on the bill (Exhibit #11).

Rep. Gilbert stated this legislation would allow Montana to be competitive with other states and is, therefore, a very important bill, deserving to be studied closely. He added the bill would lure large corporations to the state, build the tax base, and provide jobs.

PROPONENTS OF HOUSE BILL NO. 703: George Anderson, Helena CPA and representative of the Montana Chamber of Commerce, provided formulas for unitary tax (Exhibit #12), and said it is not really a unitary tax.

Mr. Anderson explained that Montana is one of three states now retaining the world-wide method. He said South Dakota and Wyoming don't have an income tax and read from a prepared statement in support of the bill (Exhibit #13). Mr. Anderson told the Committee the figures in the formulas he presented are random numbers and don't pertain to anything in particular. He said that with the Montana unitary method, U.S. parent companies with subsidiaries all over the world must include those subsidiaries and, conversely, a foreign parent company would not have to include parent company income.

Mr. Anderson pointed out that this method discriminates against U.S. business, and said he does not believe the unitary method is fair, adding Montana should not tax income from other jurisdictions. He said companies have presently agreed to accept the water's-edge method, or to continue with the world-wide method. Mr. Anderson explained he doesn't believe companies will flock to Montana, but it would provide a chance to talk to business. He said

Colorado got Texas Instruments because it got rid of its unitary tax.

Fred Ferguson, Vice President of the Council of State Chamber's of Commerce, told the Committee he works with the national committee on state taxation, and would address why business doesn't like the unitary tax. Mr. Ferguson explained the tax creates distortion, via a shift of income, and referred to Mr. Anderson's formulas, which assume all factors produce equal profitability and use an accounting process which carries assets on the books from the date of purchase.

Mr. Ferguson said the distortion works both ways, allowing taxation people to sit down with plant people or management, and when large profits occur, taxes increase under the unitary method. He stated the Japanese have a prohibition against states using the world-wide method, as do the British. He cautioned the Committee that the water's-edge method works if the right "edge" is established, and if not, the situation would worsen, creating a greater gap.

Mr. Ferguson advised that HB 703 is a fair and equitable bill, first passed by the State of Idaho, and treats all corporations on the same basis. He said the legislation is compatible with Idaho, North Dakota, Utah, Colorado, and Nebraska, and commented that Nevada, South Dakota, and Wyoming do not use the unitary method.

Mr. Ferguson said he didn't recommend Montana do what California has done, because it is not in a position to be that competitive. He told the Committee that, in Sen. Baucus' meeting with larger corporations, he found those corporations like Montana, but not its tax situation. Mr. Ferguson said Sen. Baucus stated Montana should not discriminate against corporations. He added that Digital Equipment and Micro Development companies stated that if Montana were to change this tax law, they would be far more inclined to look at Montana for business.

George Bennett, Helena attorney, representing National Cash Register (NCR), told the Committee he began working with DOR 30 years ago, and has spent the past 15 years heavily involved in corporate disputes over unitary tax, comparable only to anti-trust suits. He said the unitary tax, world-wide method needs to be addressed.

Mr. Bennett stated NCR competes with foreign corporations and is presently in litigation. He explained NCR has foreign subsidiaries for which DOR does not consider payroll and equipment, causing the company to be non-competitive with foreign parent companies who have subsidiaries in Montana. He advised that if the Committee wants to let

corporations know the state is willing to abandon the world-wide method, it will pass HB 703.

Ward Shanahan, Helena attorney, told the Committee he has two unitary tax appeal suits pending now, and urged the Committee to support the bill.

Dennis Burr, Montana Taxpayers Association, said he supported the bill as it treats domestic corporations the same as foreign corporations.

Bob Correa, Bozeman and Billings Chamber of Commerce, encouraged support of the bill.

Brian Enderle, Missoula Chamber of Commerce, said he believes HB 703 is a reasonable compromise.

Ken Williams, Entec and Montana Power, stated his support of the bill.

Gary Langley, Executive Director, Montana Mining Association, said HB 703 would bring new business to the state.

George Allen, Montana Retail Association, stated his support of the bill.

Robert Helding, Montana Association of Realtors, stated his support of the bill.

Sen. Larry Tveit, said the state is setting a different course now for the direction of the state and the budget. He explained HB 703 is one area in which to achieve positive results.

John Cadby, Montana Bankers Association, stated his support of the bill.

Janelle Fallan, Montana Petroleum Association, stated her support of the bill.

OPPONENTS OF HOUSE BILL NO. 703: Dan Bucks, Deputy Director, DOR, provided information on the effect of corporate tax rates (Exhibit #14). He said a July, 1983, Supreme Court decision, determined the world-wide unitary method to be fair and not distortional of income. He explained the proposed change would result in a higher tax burden for Montana businesses, and said that in comparing tax rates versus value of corporations created in Montana, overall, Montana corporations are identical to multistate and multinational corporations.

Mr. Bucks explained that the world-wide method gives smaller companies a chance to compete and showed a diagram of

Montana products shipped to coastal ports. He said products are loaded onto a barge, sold at an artificially low price to island corporations, who immediately sell them to larger corporations, allowing profits to be taken by island corporations. He stated audits applied to a world-wide tax properly reflect the tax in Montana. Mr. Bucks advised that this method of shifting is called "transfer pricing", and if the water's-edge approach were approved, DOR would have to audit reams of transactions to get to market value. He said it is a huge process, and is used by the IRS, with a 3% audit success rate. He added the GAO suggested a comparable process similar to unitary accounting, and said the system won't work as it relates to dividends, keeping income in non-taxable status.

Mr. Bucks said the bill would create separate investment incentives in favor of multistate and multinational firms and would be discriminatory to Montana businesses via its proposed separate accounting procedures. He explained there are technical issues on how 80-20's are defined, and on spread sheets for domestic disclosure, as well as for after-tax income, which he would address during Executive Session.

Mr. Bucks explained the amendments would require a different approach in the bill, and that he believes the bill would give differential treatment between Montana firms and multistate and multinational firms. He said other states are repealing their unitary tax and have doubled their rates on other corporations. He stated the problem with a world-wide unitary tax is a perception problem.

Don Reed, Montana Alliance for Progressive Policy, read from a prepared statement in opposition to the bill (Exhibit #15).

QUESTIONS ON HOUSE BILL NO. 703: Rep. Raney asked if foreign parent companies versus domestic parent companies would compete for productivity versus taxes. Dan Bucks replied there is not significant enough presence of foreign parent companies in the state to be affected by what is represented in the proposed legislation.

Rep. Harrington asked what effect the shipping of ore to smelters outside the country would have on Montana business. Dan Bucks replied he could not be specific without a specific example, but there should be no effect from the bill on that type of corporation tax.

Rep. Raney asked for a response on foreign parent companies. Mr. Ferguson replied that DOR has its own bill to repeal the world-wide tax, and said the difference is in how deductions are treated. He explained that both bills begin with a U.S. consolidated return, but the Governor's bill would tax 15%

of foreign income and totally excludes island sales tax. He said foreign sales corporations and domestic sales corporations are not included in the Governor's proposal either, and stated he is not certain if these differences are intentional or accidental. George Anderson commented that the Governor's bill, HB 307, would drive away companies that HB 703 is attempting to attract.

CLOSING ON HOUSE BILL NO. 703: Rep. Gilbert advised that the $86 million presence of multinational corporations has brought income to Montana, which means property tax and sales income, as well as jobs for Montana. He explained that, of the three remaining states without a unitary tax, five have no sales tax.

Rep. Gilbert asked why the majority is wrong and DOR is right, adding he believed the state had everything to gain and nothing to lose. He told the Committee they must remember large business creates small business, and said income tax is not the most important source of income to the state.

ADJOURNMENT: There being no further business before the Committee, the meeting was adjourned at 11:55 a.m.

Jack Ramirez

Representative Jack Ramirez,
Chairman

EXHIBIT
DATE 2-19-87

DAILY ROLL CALL

HOUSE TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-19-87

NAME	PRESENT	ABSENT	EXCUSED
REP. RAMIREZ	✓		
REP. ASAY	✓		
REP. ELLISON	✓		
REP. GILBERT	✓		
REP. HANSON	✓		
REP. HARP	✓		
REP. HARRINGTON	✓		
REP. HOFFMAN	✓		
REP. KEENAN	✓		
REP. KOEHNKE	✓		
REP. PATTERSON	✓		
REP. RANEY	✓		
REP. REAM			✓
REP. SANDS	✓		
REP. SCHYE	✓		
REP. WILLIAMS	✓		

CS-30

The Law Library does not have Exhibits 12-15.

Contact the Historical Society Archives, 406-444-2681.

MINUTES OF THE MEETING
TAXATION COMMITTEE
50TH LEGISLATURE

March 6, 1987

The meeting of the House Taxation Committee was called to order by Chairman Jack Ramirez on March 6, 1987, at 8:00 a.m. in Room 312B of the State Capitol.

ROLL CALL: All members were present. Also present was Dave Boyher, Researcher, Legislative Council.

CONSIDERATION OF HOUSE BILL NO. 739: Rep. Loren Jenkins, House District #13, sponsor of HB 739, said the bill would exempt certain class fourteen improvements and any addition to or expansion, remodeling, or reconstruction of improvements to class fourteen or class four property (residential and commercial). He explained that the improvements would become fully taxed in ten years.

PROPONENTS OF HOUSE BILL NO. 739: There were no proponents of the bill.

OPPONENTS OF HOUSE BILL NO. 739: There were no opponents of the bill.

TECHNICAL COMMENTS ON HOUSE BILL NO. 739: Greg Groepper, DOR, advised that there may be a constitutional problem if the Committee does not consider the exclusion in 1504-1521 on university mills for the education trust.

Todd Hudak, Associated Students of Montana State University, provided a table showing the combined effects of various property tax exemptions on education revenues (Exhibit #1).

CLOSING ON HOUSE BILL NO. 739: Rep. Jenkins asked the Committee to give the bill a favorable recommendation.

CONSIDERATION OF HOUSE BILL NO. 736: Rep. Ray Peck, House District #13, sponsor of HB 736, said the bill was originally introduced to exempt small, non-profit Christian radio stations, but the exemption would include more than just radio.

PROPONENTS OF HOUSE BILL NO. 736: Ed Matter, KXEI Radio, Havre, said that although the station has received an exemption under federal code, 501 (3) (c), it falls between the cracks with DOR. He advised that the station does not air advertisements.

Chairman Ramirez commented that a two-step penalty creates a problem for county treasurers and their computer systems.

Rep. Gilbert commented that the Committee may need to strike the new language on the bottom of page three.

Rep. Sands made a motion that HB 678 DO PASS AS AMENDED. The motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL NO. 703: Rep. Keenan stated the Committee needs to hear the Governor's bill, SB 307, in addition to hearing from the Society of CPA's.

Chairman Ramirez advised he is attempting to be fair, but believes the Committee cannot wait for SB 307.

Rep. Keenan asked why it appears to be so urgent that SB 703 pass right now. Chairman Ramirez replied the bill is not in a subcommittee.

Rep. Keenan stated that local option taxes and revisions in child and dependent care have not been assigned to subcommittees, but it appears that in dealing with major tax relief issues, they must come about in piecemeal legislation.

Rep. Raney advised that his bill, HB 138, was heard six weeks ago and hasn't even been discussed in subcommittee, nor have the property tax relief issues been discussed.

Rep. Keenan stated that is an income tax issue and should be referred to income tax subcommittee, the same as any related issue. Rep. Gilbert replied he was unaware of any bills related to the unitary tax issue.

Rep. Gilbert made a motion that HB 703 DO PASS.

Rep. Williams said he was concerned that the bill would reduce revenue by $2.5 million without replacing other revenue and could not support the bill right now.

Rep. Harrington advised he had no problem with the unitary tax, but with where it would go.

Rep. Ellison commented that it is the prerogative of the Chairman to determine how bills will be heard and discussed, and that it is the Chairman who gets the blame if the situation is not handled properly.

Rep. Raney stated that he had no doubt everyone accepts the concept of unitary tax reform, and added that everyone is aware the Governor has his own ideas on the issue.

Chairman Ramirez explained that the Committee needs to begin to take action, because hearings are scheduled every day until transmittal.

Rep. Keenan stated that in FY 88 the state is looking at a $70 million deficit, and $30 million in FY 89, and said she believes the Committee is being irresponsible if it passes HB 703 without replacing lost revenue. She said the Governor's bill addresses revenue replacement.

Rep. Williams made a substitute motion that HB 703 be TABLED. The motion failed on a roll call vote (attached) and the vote was reversed to give the bill a DO PASS recommendation.

DISPOSITION OF HOUSE BILL NO. 714: Rep. Raney made a motion that HB 714 DO PASS.

Chairman Ramirez asked Greg Groepper, DOR, if language on page 2, line 8 of the bill would be a problem. Mr. Groepper replied he didn't think so, as the figures would remain until the next cycle is completed.

Chairman Ramirez asked if coordinating instructions were necessary. Dave Bohyer replied they were not.

The motion made by Rep. Raney CARRIED, with all members voting aye except Reps. Hoffman, Gilbert and Ellison, who voted no.

DISPOSITION OF HOUSE BILL NO. 794: Rep. Williams made a motion that HB 794 DO PASS and provided amendments to the bill. He made a motion that the amendments be approved.

Dave Bohyer advised that the amendment makes all nonprofit, licensed health care facilities exempt from property tax.

Greg Groepper advised that the district court still needs to decide the issue of the facility in Bozeman. Rep. Williams replied that HB 794 would nullify that suit.

The motion made by Rep. Williams CARRIED, with all members voting aye except Rep. Ramirez, who voted no.

Rep. Williams made a motion that HB 794 DO PASS AS AMENDED.

Rep. Sands stated he was concerned about the effective date. Greg Groepper replied the bill should be made effective this year.

Rep. Williams commented the bill doesn't affect any corporations now and only closes the door on what could happen.

DAILY ROLL CALL

HOUSE TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 6, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. RAMIREZ	✓		
REP. ASAY	✓		
REP. ELLISON	✓		
REP. GILBERT	✓		
REP. HANSON	✓		
REP. HARP	✓		
REP. HARRINGTON	✓		
REP. HOFFMAN	✓		
REP. KEENAN	✓		
REP. KOEHNKE	✓		
REP. PATTERSON	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. SANDS	✓		
REP. SCHYE	✓		
REP. WILLIAMS	✓		

CS-30

STANDING COMMITTEE REPORT

EXHIBIT
DATE 3-5-87
HB 703

March 6 19 87

Mr. Speaker: We, the committee on HOUSE TAXATION

report HOUSE BILL NO. 703

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Representative Jack Ramirez, Chairman

FIRST reading copy (WHITE color)

22

EXHIBIT
DATE 3-6-87
HB 703

ROLL CALL VOTE

HOUSE TAXATION COMMITTEE

DATE 3-6 BILL NO. HB703

NAME	ABSTAIN	AYE	NAY
RAMIREZ, REP. JACK			✓
ASAY, REP. TOM			✓
ELLISON, REP. ORVAL			✓
GILBERT, REP. BOB			✓
HANSON, REP. MARION			✓
HARP, REP. JOHN			✓
HARRINGTON, REP. DAN		✓	
HOFFMAN, REP. ROBERT			✓
KENNAN, REP. NANCY		✓	
KOEHNKE, REP. FRANCIS		✓	
PATTERSON, REP. JOHN			✓
RANEY, REP. BOB		✓	
REAM, REP. BOB		✓	
SANDS, REP. JACK			✓
SCHYE, REP. TED		✓	
WILLIAMS, REP. MEL		✓	
TALLY		7	9

Joann Banschbach
Secretary

Rep. Jack Ramirez
Chairman

Motion: Wms - Table - Failed
+ reverse vote to Gilbert's
motion to DP

Form CS-31A
Rev. 1985

MONTANA LEGISLATIVE [illegible]NCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) TAXATION

CHAIRMAN--SEN. GEORGE MCCALLUM
NORMAL SCHEDULE==> SITE: ROOM 413/415 DAYS: MON THRU FRI TIME: 8:00 A.M.
SECRETARY-AGGIE HAMILTON

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES---	COMMITTEE ACTION---	REREFERRED TO COMM---	DATE OUT-
HB0666 RAMIREZ, JACK	3/04	3/24	3/27, 4/2, 4/6	CONCUR AS AMENDED		4/8
			ALLOW MUNICIPALITY TO PLEDGE CERTAIN REVENUE FOR TAX INCREMENT DEBT PAYMENT			
HB0678 CONNELLY, MARY ELLEN	3/17	3/25		ADVERSE REPORT		3/27
			PENALTY FOR DELINQUENT PROPERTY TAXES BASED ON PERCENTAGE OF AMOUNT UNPAID			
HB0700 BRADLEY, DOROTHY	3/19	3/26	3/27	CONCUR		3/28
			PROVIDE AUTHORITY TO ISSUE SCIENCE AND TECH. DEV. SEED CAPITAL FUND BONDS			
HB0703 GILBERT, BOB	3/14	3/20		CONCUR AS AMENDED		4/10
			PROVIDE FOR WATER'S-EDGE UNITARY COMBINATION METHOD OR NEW INVESTMENT CHOICE			
HB0705 PHILLIPS, JOHN	3/04	3/21		CONCUR		3/21
			EXEMPT FROM INCOME TAX ARMED FORCES SALARY OF RESIDENTS IN REGULAR SERVICE			
HB0709 BROWN, DAVE	3/23	3/26		CONCUR AS AMENDED		3/30
			EXPANDING PROPERTY TAX INCENTIVES FOR NEW AND EXPANDING INDUSTRIES			
HB0714 CONNELLY, MARY ELLEN	3/11	3/24	3/30	CONCUR		4/6
			REQUIRING INFLATION ADJUSTMENTS TO INCOME LEVELS FOR CERTAIN CLASS 4 PROP'TY			
HB0716 BROWN, JAN	3/23	4/06		CONCUR		4/6
			IMPOSING A FEE ON HEALTH INSURERS TO FUND VOLUNTARY GENETICS PROGRAM			
HB0717 BROWN, JAN	3/04	3/09		CONCUR		3/9
			PROVIDE SIMILAR TAXATION OF BEER SOLD BY WHOLESALER REGARDLESS WHERE BREWED			
HB0726 SPAETH, GARY	4/10	4/13		CONCUR		4/13
			FLEXIBILITY FOR RESORT COMMUNITY TAX			
HB0733 QUILICI, JOE	3/16	3/21		CONCUR AS AMENDED		3/21
			TAX EXEMPTION FOR NONPROFIT FACILITIES FOR INTERNATIONAL SPORTS COMPETITION			

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 20, 1987

The forty-fifth meeting of the Senate Taxation Committee was called to order at 8:10 A.M. on March 20, 1987 by Chairman George McCallum in Room 413/415 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Crippen.

CONSIDERATION OF HB 539: Representative Hoffman, House District 74, presented this bill to the committee. This is an act requiring a published notice of application for tax deed to include the names and addresses of persons having an ownership interest in the property. He said that is the extent of the bill. Tax sale notices are printed in the paper with the legal description of the property and so often people lose their property without being aware it is advertised and up for sale. If the names of those people are on the notices, it might save these people a great deal of hardship.

PROPONENTS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Bishop said didn't we have a bill like this on tax deeds.

Jim Lear said we did have a bill that was passed out by the committee that was requested by the Revenue Oversight Committee. That was a general bill addressing the subject of tax debts. He does not know if it overlaps with this bill.

Representative Hoffman closed.

CONSIDERATION OF HB 703: Representative Gilbert, House District 22, presented this bill to the committee. This bill is a revision of the Montana state unitary tax method of accounting. At the present time we use the worldwide unitary method in the state of Montana. According to a lot of people, this method has kept a lot of multi-national companies out of the state of Montana. The obvious reason is they tax everything they have world-wide. Multi-national companies believe it is an unfair tax. Foreign countries will not allow companies to

operate in their country if they are based in a state that has worldwide unitary taxation as it takes taxation away from their country. It is a time to let things happen and a time to make things happen and this is the time to make things happen. Time to eliminate the unitary taxation method in the state of Montana. In 1983 twelve states in the nation still had the unitary method of taxation worldwide. Today there are only three, Montana, North Dakota and Alaska. North Dakota already passed their bill through the House which is identical to this one. Idaho passed one in 1986 identical to this bill. If we want to attract multi national corporations, that is where the dollars are. If you can get them in the state, we are talking about thousands of jobs. The fiscal note said we will lose a lot in taxes but we will gain a lot in jobs and property taxes. This is an opportunity to bring new jobs to the state of Montana.

PROPONENTS: George Anderson, CPA, Helena, representing the Montana Chamber of Commerce, gave testimony in support of this bill. He said this bill is a clarification bill of the unitary method of computing taxes. This has been a very controversial bill. There really is no such thing as unitary tax but there is a unitary method of computing income in order to compute the tax. The multi-national companies, foreign companies, will not locate in Montana as long as we use the worldwide method of computing under the unitary method. He furnished the committee with testimony in support of this bill, attached as Exhibit 1. He does not believe the fiscal note is completely correct. At the present time the Department of Revenue interprets the unitary method that you can virtually use only the worldwide income. Their interpretation depends on which will result in the largest amount of income for the state. The Department of Revenue discriminates against domestic corporations and application of the unitary method. Domestic parent corporations must use all worldwide income, foreign parents do not have to. There isn't anything in the law that says that should be the way, the Department of Revenue has always interpreted it that way. What this bill does is it allows the company to make the election to be on the worldwide method or waters edge method. In the waters edge a portion of the foreign dividend is included.

Gordon Bennett, attorney from Helena, registered lobbyist for the Northern Border Pipeline, gave testimony in support of this bill. The Northern Border Pipeline operates in Canada, which makes them multi national.

He has done a lot of work in the unitary area in the last 15 years. The reason that corporations look on the world-wide approach as unfair, results from the fact that once you go beyond the borders of the U.S. you run into no man's land in terms of what are taxes, what are royalties, general accounting practices, a whole host of things. The corporations that do business in foreign countries and who have been subjected to the unitary, feel this can be manipulated by the state. That is why the unitary approach on a worldwide basis is looked on with such disfavor by businesses. You can have a small operation in Montana that is losing money and can prove that, and Montana will put all of your income into the pool, from any other source. That is why Montana's worldwide approach is looked at with such disfavor. The federal government essentially uses a waters edge method. They treat foreign source income as foreign source income and allow adjustments for deductions or credits for foreign taxes. Montana relies very heavily on what the federal government does. If we go to the waters edge it will be much easier for taxpayers and tax administrators to handle domestic income. There is concern of a revenue shortfall. There have been a lot of disputes over the worldwide method and a lot of money is tied up in protest. A lot of staff people in the Department of Revenue are tied up in audits. He thinks this will be a much easier approach in determining what is income if we go to a waters edge where you can rely on federal audits.

Dennis Burr, representing the Montana Taxpayers Assn., gave testimony in support of this bill. Last summer there were several economic seminars discussing the tax policy and economic system of Montana. Everyone that came into Montana to give advice, recommended that we eliminate the unitary method of filing corporation tax returns. One gentleman said that on economic ground unitary was okay but he still recommended that Montana go to the waters edge approach. The reason being is the unitary method is keeping companies out of Montana. The alternative bill simply puts the current practice of the Department of Revenue into law. The other method tends to treat foreign parent corporations better than American domestic corporations. The Department seems to have the ability to run corporate tax returns both ways and settle on the one that produces the best revenue for the state of Montana. We should treat domestic corporations in the same manner as foreign corporations.

Bob Correa, representing the Bozeman Chamber of Commerce, gave testimony in support of this bill. It has been a long standing policy of the Bozeman Chamber of Commerce

for total repeal of the unitary tax. We should be going further than this bill goes.

Riley Johnson, representing the National Federation of Independent Business, gave testimony in support of this bill. He furnished the committee with the ballot results from 5,000 independent businesses in the state of Montana in 1987, attached as Exhibit 2. He referred to question number four, which indicated that 63% of the businesses were in support of the waters edge unitary tax. In a poll taken three years ago on the same question, 47% of the small businesses were in favor. Small business does live on big business and we need to wake up to that fact.

Robert N. Helding, Montana Association of Realtors, gave testimony in support of this bill. He feels this would be a major step forward in Montana's sound economic reform. They support the enactment of HB 703.

Ken Williams, representing Entech, a Montana Power Company, gave testimony in support of this bill. They purchased a great deal of mineral rights in western Montana, somewhere in excess of 800,000 acres. They will be contacting international firms to get involved in some of these projects. They have found the unitary method of taxation as a concern to these people. For these reasons they support this bill.

Jack Traxler, representing the Missoula County Freeholders, gave testimony in support of this bill. They feel our state will not get any outside business while the unitary system is in place.

OPPONENTS: John LaFaver, Director, Department of Revenue, gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 3.

Phil Campbell, representing the Montana Education Assn., gave testimony in opposition to this bill. When the session first started his organization took a position of supporting a change in the unitary method of taxation to help the business climate. This bill is different than the Governor's proposal and carries a fiscal impact that will have a negative impact on schools. This bill will have a total impact of $3.8 million each year and 25% of that goes to the school equalization fund. After 1989 the school equalization fund will lose almost $1 million a year by using this method. They support the waters edge concept proposed in SB 307 but not this method.

Sue Fifield, representing Montana Low Income Coalition, gave testimony in opposition to this bill. They are strong supporters of jobs and economic development. Jobs are one of their first priorities. They question how many jobs would be affected by a change in taxation from unitary to waters edge. Is there not already tax breaks offered to new companies. Don't companies get a tax break already for investments made outside of Montana. They do not feel it would be fair to shift the tax burden to our middle and low income people.

Barbara Archer, representing the Women's Lobbyist Fund, gave testimony in opposition to this bill. She opposes this bill for three reasons: 1) fairness based on ability to pay; 2) this would benefit few corporations and cost the state millions in the coming years and provide inadequacy to fund state and local government; and 3) investment in the state's economy. Where is the evidence that these kinds of incentives work. Our evidence is that the rich are getting richer and the poor are getting poorer.

Earl Riley, Montana Senior Citizens Association, gave testimony in opposition to this bill. Incentives have been going on since 1981 to give Montana businesses an investment in Montana. Where are the jobs and increased investment. Since 1981 we have seen our surplus of $120 million go to a deficit of $200 million plus. We are told we must wait, this will take time. How much time will it take. You want to give these people more incentives, it is about time the ordinary taxpayer gets an incentive.

Don Judge, AFL-CIO, gave testimony in opposition to this bill. There is a question in the minds of the people of Montana as to the effect of tax breaks. The tax breaks talked about in this bill would affect 15-20 major multi national corporations. The maximum amount this bill proposes to give these companies is $3.8 million, which is quite a tax break if spread between the 20 corporations affected. We are talking about perceptions of the business climate that appears to be out of line with what we feel needs to be done in Montana for growth. As you debate this bill, remember that if this legislation is enacted, you will be taking necessary funds from state and local governmental services and will be placing an extra tax burden on the people of this state who are screaming for tax reform.

Ken Peres, Montana Alliance for Progressive Policy, gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 4.

QUESTIONS FROM THE COMMITTEE: Senator Eck asked Dan Bucks if we are looking at a revenue neutral corporation tax package, what kind of percentage increase would be needed to make up for this.

Dan Bucks said about a 1/2% increase in the corporation tax rate if it were an increase in the corporation tax. The corporation tax would need to go from the current 6-3/4% to 7-1/4%.

Senator Eck asked how much of the $3.8 million loss would come from the part taxing 15% and how much from the provision for new investments.

Dan Bucks said he did not believe the estimate included any loss because of the new investment feature.

Senator Lybeck asked George Anderson if he really thought it was in the best interest of Montana and the United States to send this kind of a message to foreign countries. He was referring to a comment made by Mr. Anderson that California changed their unitary method of taxation and immediately 3 Japanese companies came in and established business in California.

George Anderson said he thought that the world has become a worldwide economy. If we want to try and be selective within the United States, it will be very difficult to continue doing business.

Senator Lybeck remembers World War II and worries about foreign counties taking over more and more in the United States.

Senator Severson asked George Anderson how we compare with our neighboring provinces of British Columbia and Alberta.

George Anderson said he is sure that the companies in Canada are getting a much better tax break than the companies operating in Montana. He is not an expert on Canadian taxes but the companies will go to where they can make money.

Senator Hirsch referred to Section 7 on page 6. In eastern Montana they have a foreign company, who has gotten their corporate structure in order to buy large portions of land and he has heard they are already doing

business in Montana. He asked how they would be affected by Section 7.

John LaFaver said he does not know exactly what their financial situation is. They could allocate their expenses in Montana and allocate their income away. That is a way of eliminating their tax bill in Montana.

Senator Mazurek referred to George Anderson's comment in his testimony that he did not believe the fiscal note was correct. He asked him to expand or to furnish the committee with his idea on what is correct.

George Anderson said we have never felt that the fiscal note that came out on this particular tax was correct but we have no idea on how it should be computed. He is not sure the Department has the data base to make those computations.

Senator Halligan asked if there was some fiscal impact that could be agreed on, some negative revenue that as a result of this other individuals will make that up.

George Anderson said there may be a negative impact, he has no idea. Whatever that impact is, even if it is what the Department is saying, it would be worth it. Without getting rid of this unitary method, we don't stand a chance.

Senator Brown said to George Anderson you say you can guarantee more foreign investment from these big corporations. It seems to him that the bill deducts money to be made in Montana with a $3.8 million impact. Businessmen are in business to make money. Isn't the affect of this tax the real governing factor.

George Anderson said as far as foreign parent companies are concerned they do not want the state of Montana to be able to get at their income from out of Montana, that they did not make in Montana. Given a choice of investments, they would not invest in Montana over another state.

Representative Gilbert closed by stating this is a pro-business bill. This bill is designed to try to attract business to the state of Montana. What we are saying is give us fairness in taxes and we will give you jobs. We are losing jobs because we have a bad business climate.

CONSIDERATION OF HB 583: Representative Donaldson, House District 43, presented this bill to the committee.

TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 3-20-87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN			✓
SENATOR NEUMAN	✓		
SENATOR SEVERSON	✓		
SENATOR LYBECK	✓		
SENATOR HAGER	✓		
SENATOR MAZUREK	✓		
SENATOR ECK	✓		
SENATOR BROWN	✓		
SENATOR HIRSCH	✓		
SENATOR BISHOP	✓		
SENATOR HALLIGAN, VICE CHAIRMAN	✓		
SENATOR McCALLUM, CHAIRMAN	✓		

Each day attach to minutes.

House Bill 703 March 20, 1987

Testimony - George D. Anderson, CPA
Montana Chamber of Commerce

Unitary Method of Computing Corporation License Tax Income - Unitary Companies

"World Wide"

$$\frac{\frac{\text{MT Sales}}{\text{WW Sales}} + \frac{\text{MT Property}}{\text{WW Property}} + \frac{\text{MT Payroll}}{\text{WW Payroll}}}{3} \times \text{WW Income} \times 6.75\% = \text{Montana Corporation License Tax}$$

"Waters Edge"

$$\frac{\frac{\text{MT Sales}}{\text{US Sales}} + \frac{\text{MT Property}}{\text{US Property}} + \frac{\text{MT Payroll}}{\text{US Payroll}}}{3} \times \text{US Income*} \times 6.75\% = \text{Montana Corporation License Tax}$$

* Under HB 703 15% of foreign dividends (as defined in bill) are included in US income.

"World Wide"

$$\frac{\frac{\$\ 500,000}{\$5,000,000} + \frac{\$\ 150,000}{\$3,000,000} + \frac{\$\ 50,000}{\$750,000}}{3} \times \$300,000 \times 6.75\% = \text{Tax}$$

$$\frac{.10 + .05 + .07}{3} = .0733 \times \$300,000 = \$22,000 \times .0675 = \$1,485$$

"Waters Edge"

$$\frac{\frac{\$\ 500,000}{\$2,000,000} + \frac{\$\ 150,000}{\$1,000,000} + \frac{\$\ 50,000}{\$400,000}}{3} \times \$130,000 \times 6.75\% = \text{Tax}$$

$$\frac{.25 + .15 + .125}{3} = .175 \times \$130,000 = \$22,750 \times .0675 = \$1,535$$

SENATE TAXATION
EXHIBIT NO. 1
DATE 3-20-87
BILL NO. HB 703

SENATE TAXATION
EXHIBIT NO. 2
DATE 3-20-87
BILL NO. HB703

National Federation of Independent Business

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) N. Last Chance Gulch
Helena, MT 59601

Important Notice:

NFIB has commissioned the Institute for Enterprise Advancement to gather and publish valuable information from NFIB members pertaining to small business issues in your state.

The effectiveness of this survey will be enhanced by returning the entire ballot. Thank you for your participation.

TAXES/FISCAL:

General Taxation

1. After cutting state expenditures as much as possible, should the Legislature:

a. Institute a state sales and use tax?

☐ Yes	☐ No	☐ Undecided
1 61%	2 32%	3 7% [11]

b. Institute a state lottery?

☐ Yes	☐ No	☐ Undecided
1 71%	2 23%	3 6% [12]

c. Pass a local option sales tax, including a "bed" tax?

☐ Yes	☐ No	☐ Undecided
1 41%	2 49%	3 10% [13]

d. Increase motor fuel taxes?

☐ Yes	☐ No	☐ Undecided
1 16%	2 77%	3 7% [14]

e. Increase the personal income tax

☐ Yes	☐ No	☐ Undecided
1 7%	2 89%	3 4% [15]

f. Increase the corporate income tax?

☐ Yes	☐ No	☐ Undecided
1 10%	2 84%	3 6% [16]

g. Reinstate the business inventory tax?

☐ Yes	☐ No	☐ Undecided
1 4%	2 93%	3 3% [17]

h. Increase the tax on tobacco and liquor products?

☐ Yes	☐ No	☐ Undecided
1 59%	2 34%	3 7% [18]

Tax Preference

2. As a guide to the Legislature, which two of the following methods are the most acceptable to you as a way of helping balance the state's budget? (Select two)

27% [1] ☐ a. Institute a sales and use tax
24% [2] ☐ b. Institute a state lottery
2% [3] ☐ c. Increase the personal income tax
3% [4] ☐ d. Increase the corporate income tax
17% [5] ☐ e. Increase the tax on tobacco and liquor products
27% [6] ☐ f. A ten percent across-the-board cut in state spending [19-20]

BACKGROUND: State revenues have slid into the basement due to the generally poor economy of the state. A combination of spending cuts and tax increases will be needed to balance the state's budget.

The Legislature met in late June and early July for 14 days to balance the state's budget deficit, which was estimated at that time to be nearly $100 million. One of the major actions taken was to reduce highway funding by $16.5 million, and increase the gasoline tax by two cents a gallon.

In January, the Legislature will no doubt take additional actions to cut state spending, but lawmakers will have to find ways to increase state revenues. All of the actions listed above will be up for consideration.

Your answer to question 2 will help lawmakers determine which action is most preferable, if such action is absolutely necessary.

Tax Incentives

3. Should the Legislature enact a property tax incentive for new or expanding business?

☐ Yes	☐ No	☐ Undecided
1 72%	2 18%	3 10% [21]

BACKGROUND: Although Montana has several tax incentives on the books, none contain specific property tax enticements that would lure new industry into the state.

A specific incentive that frequently has been mentioned would tax new or expanding business that meets certain requirements at 50 percent of its valuation for the first five years of operation. Taxable value would increase by ten percent each of the following years until full valuation is obtained after the tenth year of operation.

Supporters of the proposal say it would attract new business into Montana and encourage existing firms to modernize and expand, thus increasing their production and employment. Because the incentive could be enacted at the discretion of a local government, they say it would not be forced on any city or county that does not want to provide it. Local governments would not lose any money because they would immediately receive taxes from half the business' valuation once it commenced operation.

Opponents of the idea question whether specific property tax incentives really would attract new business. Moreover, they contend that an incentive for new or expanding business would place existing firms at a competitive disadvantage. They also argue that the tax incentive would prevent local governments from receiving their "fair share" from new or expanding industry because such businesses would not immediately be taxed at full valuation.

"Water's Edge" Unitary Tax

4. Should Montana's unitary method of taxing multinational corporations be modified by eliminating taxes on any business profits earned overseas as long as the loss of revenue is not picked up by increasing some other business tax?

☐ Yes	☐ No	☐ Undecided
1 63%	2 17%	3 20% [22]

BACKGROUND: The unitary tax is collected from companies that operate both in Montana and in other states or overseas. Montana's tax law presently requires these companies to take into account all of their operations, regardless of their location, when computing their

(continued)

corporate income tax. Under the proposed "water's edge" amendment, the tax would be applied only to business activities conducted in the United States.

Those who support modification of the present law contend that the unitary tax is very detrimental to the state's efforts to attract new business and expand the economy. They also point out that Montana is one of the few states with a worldwide application of the unitary tax. Those states that have a unitary method of taxation have gone to the "water's edge" approach. By modifying the tax, proponents say that it will be much easier for the state to compete for new business.

Opponents of the proposed change argue that modifying the unitary tax would cost th state much needed revenue at a time when state revenues are decreasing rapidly. They also disagree with the argument that such modification would provide an incentive fo attracting new business to the state.

LABOR:

Workers' Compensation

5. Should Montana's workers' compensation law be changed to eliminate lump-sum settlements?

☐ Yes [1] 89% ☐ No [2] 6% ☐ Undecided [3] 5% [23]

BACKGROUND: Montana's workers' compensation system currently allows for lump-sum settlements. Recent awards allowed by workers' compensation judges have been, in the view of many business persons, extremely generous. As a result, the state Workers' Compensation Fund is facing a deficit that can only be balanced with an increase in rates for employers. However, industries such as small logging and mining companies contend their rates already are too high. Any increase, they say, could mean the difference between life and death for their mills. In fact, they argue that the system should be restricted sufficiently to provide for a decrease in rates.

Supporters of the proposed change say lump-sum settlements should be eliminated because, in addition to being excessively generous, such awards are placing an undue hardship on the solvency of the state fund.

Opponents of change, primarily organizec labor leaders and trial lawyers, maintain tha the workers are entitled to the high awards they receive from the system. They also mai tain that settlements, including lump-sum awards, should be allowed at the discretion c the injured party if he or she obtains a favorable ruling from the workers' compensa tion judge. They deny the existence of widespread fraud or that awards are made fo questionable ailments.

Unemployment Compensation

6. If the federal government is forced to reduce its share of the costs of unemployment compensation extended benefits, what should be the response of the state legislature? (Select one)

78% [1] ☐ a. The state should reduce its share of extended benefit costs in line with the federal reduction.

20% [2] ☐ b. The state should continue to pay its full share of extended benefit costs, but not increase its costs by replacing lost federal funding.

2% [3] ☐ c. The state should increase its share of extended benefit costs to offset the federal reduction. [24]

BACKGROUND: Currently, the unemployment compensation extended benefits program provides for up to 13 weeks of benefits beyond regular state benefits if a state's insured unemployment rate reaches a specified "trigger" level. The costs of these extended benefits are shared on a 50/50 basis by the states and the federal government.

Under the provisions of the federal Gramm-Rudman-Hollings budget reduction legislation, the federal share of extended benefits costs is subject to mandated reductions in order to meet specified budget deficit goals. Congress has provided that the states may respond to this provision of Gramm-Rudman in one of three ways. A state may take action to: 1. reduce its share of extended benefits costs in an amount not to exceed the federal reduction, 2. continue to pay its full share of extended benefits, so that the only reduction wil be on the federal side, or 3. increase its share of the costs by paying the full extended benefits payment, thereby picking up the cost of the federal cutback.

If the state legislature chooses to take no ac tion in response to this provision of Gramm-Rudman, then the third option listed above (state increases its share of extended benefits costs) will be automatically imposed upon the state under federal law.

LEGAL:

Tort Reform

7. Should the concept of joint and several liability be abolished?

☐ Yes [1] 91% ☐ No [2] 4% ☐ Undecided [3] 5% [25]

BACKGROUND: The concept of joint and several liability allows an injured claimant to collect an entire award from any or all parties that are jointly liable for the damage, regardless of their actual percentage of fault.

For example, an injured person could collect all of the damages award from a solvent party who was only five percent responsible for the damage if the injured party was not able to collect anything from an insolvent party who may have been 95 percent at fault. If joint and several liability was abolished, then the injured party in the example could collect only five percent of the award from the defendant who was five percent responsible for the damage.

Proponents of abolishing joint liability say that a "deep pocket," such as that of a municipality or a small-business owner, should not have to bear the expense for an entire damage award if only minimally responsible for the damage. The liable party should only be responsible for his share of the damage award.

Opponents contend such a change would only serve to punish the injured party, who might be without fault, by not allowing him to receive full compensation due to the insolvency of the defendant who was most at fault for this injury.

Collateral Source

8. Should a plaintiff in a liability suit be allowed to recover damages already paid or to be paid by others?

☐ Yes [1] 9% ☐ No [2] 84% ☐ Undecided [3] 7% [26]

BACKGROUND: A successful plaintiff (injured party) is able to recover an award through a jury trial or through negotiation of an out-of-court settlement. He can also receive funds from other sources, such as insurance, pension or retirement funds, employee benefit accounts, and social security. In some cases, a plaintiff may receive monies for the same injury from more than one source.

Proponents of the current law contend that an injured party should be allowed to receive collateral payments, since the awarded amount of a jury verdict may be reduced on appeal. The additional recovery from a second source could help to make up for what might already be an inadequate award. Proponents further contend that this procedure is not "double dipping," but rather a practical proration of an award.

Opponents contend that a plaintiff should not be allowed to recover twice for the same loss. They argue that the practice of "double dipping" is one more factor in a long list of items that have contributed to the liability crisis.

Punitive Damages

9. Should plaintiffs be restricted in their ability to make claims for punitive damages?

☐ Yes [1] 81% ☐ No [2] 11% ☐ Undecided [3] 8%

BACKGROUND: Punitive damages can be awarded at the discretion of the court or jury when the conduct of the wrongdoer has been oppressive, malicious, or fraudulent. As a general rule, punitive damages are not covered by insurance and must be paid directly by the defendant(s). Punitive damage awards in Montana have been few.

Increasingly, however, claims for punitive

(continued)

REMARKS OF JOHN D. LAFAVER
Senate Tax Committee
March 20, 1987

SENATE TAXATION
EXHIBIT NO. 3
DATE 3-20-87
BILL NO. HB703

Mr. Chairman:

I am John LaFaver, State Director of Revenue. I represent the Administration in opposing HB703.

The issue here is not whether this legislature will haul down the so-called red flag of worldwide unitary. The issue is how to eliminate it while assuring a fair tax structure for all firms doing business in our state.

Over the past several weeks we have shared with you our ideas of tax reform. They essentially involve the notion that all taxpayers should benefit from lower rates, fewer loopholes, and a flatter playing field. They should have equal opportunity to prosper under our tax laws.

This bill goes the opposite direction. It carves new loopholes for a handful of large corporations by providing lower taxes for those who find foreign tax havens. It allows large multinational firms which invest in Montana a 5-year tax holiday, but no tax break for the small Montana firms that will have to compete against them.

The bill provides a major tax break to a very few firms now doing business in Montana. The break becomes larger the more these firms shift operations overseas. So it runs contrary to the idea of attracting business here. It rewards business for leaving the United States.

You have heard in SB307 a fairer and more responsible version of dealing with worldwide unitary. That version costs $6.6 million less (on a full biennium basis) than HB703. It assures that multinationals not shift their legitimate tax responsibility to mainstreet Montana businesses. The difference between SB307 and HB703 is simply the difference between reform and ripoff. In the name of responsible, reasonable, balanced tax reform, I ask you to defeat HB703.

34

SENATE TAXATION
EXHIBIT NO. 4
DATE 3-20-87
BILL NO. HB 703

TESTIMONY OF KENNETH R. PERES ON HB 703
Senate Taxation Committee
March 20, 1987

Mr. Chairman and members of the committee, my name is Ken Peres. I am an economist working for the Montana Alliance for Progressive Policy. I was a former Visiting Assistant Professor of Economics at the University of Montana. I was also staff economist for the House Select Committee on Economic Development during the 1983 Montana legislative session.

We oppose HB.703 for four basic reasons:
- -it is a bad investment
- -it is bad economic development policy
- -it will lose revenue
- -it is unfair

1) HB 703 IS A BAD INVESTMENT: NOT ONE CENT OF THIS $3.85 MILLION A YEAR INVESTMENT IS GUARANTEED

***Would You Give Someone $3.85 Million A Year Without Any Assurance That It Would Lead To Any Return?**

Suppose you were a financial consultant or a banker and someone came in and asked you for $3.85 million a year. You would ask what you would get for your money - the answer given by those supporting HB 703 is "Expressed Interest," "Send a Signal," "The Hope for Future Investment."

There is no dotted line - only signals
There is no security - only concern
There is no actual return or guarantee

Not one cent of this $3.85 million is guaranteed. Financial consultants would term such a $3.85 million investment as high risk, low probable return with no security, and, thus, a very poor investment.

***What Would It Take for The State To Recover Its $3.85 million Investment?**

The size of the re-investment needed to recoup the $3.85 million in lost revenue would be enormous. Using the oil and gas mining industry as an example - In order to recover $3,850,000 in taxes the entire oil and gas extraction sector would have to:

- -increase its workforce by 3,450 employees or a 150% increase over the entire 1986 Montana Oil and Gas extraction workforce of 2,300
- -invest $1.321 billion in order to employ another 3,450 workers
- -generate an additional $22,861,000 in Montana net taxable income - a 124% increase over 1985

In this hypothetical example, the oil and gas extraction industry would have to enact a Marshall Plan for Montana JUST SO THE STATE COULD BREAK EVEN ON ITS INVESTMENT. Will the passage of HB 703 induce this scale of investment in Montana?

3F

2) HB 703 IS BAD ECONOMIC DEVELOPMENT POLICY

***Special Corporate Tax Reductions Have Failed to Increase Investment At Both Federal and State Levels**

HB 703 will reduce taxes ONLY FOR MULTI-NATIONAL CORPORATIONS. These are the same corporations which primarily benefitted from the 1981 tax incentives given by the U.S. Congress which hoped to stimulate investment. These reforms failed to stimulate investment. One survey of 253 corporations found that from 1981-1983 these corporations made over $287 million profits, obtained $90 billion in tax reductions yet reduced investment by 15.5%.

A recently released study cited in the Great Falls Tribune high taxes, concluded that "high-tax, highly regulated, and heavily unionized states...do best overall."

Special tax reductions have also failed in Montana.The "New Industry Tax Credit" has failed to induce new investment Another example is provided by Burlington Northern which obtained more than $39 million in reduced property taxes so that Montana would be in compliance with the federal 4Rs Act. BN did not increase investment in Montana; instead it reduced employment by 3,000 workers, abandoned 396 miles of track, closed 31 stations and is being sued for charging Montana farmers 87% more in freight rates than Nebraska farmers for the same tonnage and distance.

***HB 703 Will Forego Money That Would Have Been Spent In Montana**

While we have no idea where the HB 703 Money will be spent, we do know that the $3.85 million in taxes collected by the state would be spent in Montana.

***HB 703 Will Provide Yet Another Incentive for Corporations to Export Capital and Jobs**

Multi-national corporations would have an 85% Incentive to locate overseas.

***HB 703 Gives Multi-National Corporations a Competitive Advantage Over Businesses Operating Entirely Within Montana or the U.S.**

3) HB 703 WILL MEAN LOST REVENUE

Montana will lose $2.3 million in FY 89 and at least $3.85 million a year thereafter. This loss of revenue comes at a time of deep fiscal crisis and severe budget cuts for many programs affecting many people.

This special tax provision is built on a tax structure edifice that is leaking very badly. The MAPP study found that special tax provisions cost the state $282 million in FY 85 alone.

SENATE TAXATION
EXHIBIT NO. 4
DATE 3-20-87
BILL NO. H.B. 703

(1) HB 703 WILL MEAN LESS FAIRNESS: COSTS WILL BE SHIFTED FROM MULTI-NATIONAL CORPORATIONS ONTO AVERAGE INCOME MONTANANS AND SMALL BUSINESSPEOPLE

*Smaller Businesses Operating Wholly Within Montana and the U.S.
HB 703 gives a competitive advantage to multi-national corporations in relation to businesses operating solely in Montana or the U.S.
- -Businesses operating solely in Montana or the U.S. must report all their income and then subtract their allowable deductions to obtain net taxable income. HB 703 allows multi-national corporations to
  - -exclude 85% of dividend income from related foreign cororations
  - -deduct all taxes for certain domestically incorporated foreign operating corporations, the so-called 80-20s
  - -shelter even more income by liberalizing the apportionment formula for certain corporations

*Adopting HB 703 Could Increase The Export of Capital and Jobs

Giving a major tax break to multi-national corporations for their overseas operations may be an incentive to export capital to foreign areas with lower taxes since most of the corporation's foreign dividends would be tax exempt. In other words, HB 703 creates an "85% Loophole Incentive" for corporations to transfer operations outside the U.S.

*All Montanans Facing Budget Cuts, Reduced Government Services And/Or Higher Taxes

Removing $3,850,000 from the tax base would be another painful exercise in state economic policy.
- -Reducing the state portion of the school foundation program will increase pressure on local property taxpayers.
- -Reducing general fund appropriations will mean less jobs, and governmental services.

The Average Income Montanan Will, Mostg Likely, Have to Replace the Lost Revenue Gained by Multi-National Corporations.
- -an increase in income taxes - 70% of reported income is wage and salary income
- -a sales tax - Montanans will pay approximately 93% of a sales tax - tourists only 7%

HB 703 sets the stage for a shift in the tax burden
From Multi-National Corporations
TO Montana Wage Earners and Businesspersons

SENATE TAXATION
EXHIBIT NO. 4
DATE 3-20-87
BILL NO. H.B. 703

DATE March 20, 1987

COMMITTEE ON Senate Taxation

VISITORS' REGISTER HB553, 583, 703

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
E.H. Buck Boles	MT CHAMBER	HB 703	✓	
Gene Phillips	PP&L and NTS	HB583	✓	
George Anderson	Mont Chamber	HB703	✓	
Jack E Tanner	Missoula Co. Federation	HB703	✓	
Howard Hilla	MT PSC	HB583	✓	
Ken Williams	Entech	HB 703	✓	
Bob Quinn	MT Power Co.	HB-583	✓	
EARL J. REILLY	M.S.C.A.			X
Sue Fifield	MCIC	HB703		X
BOB HELDING	MT. ASSOC. OF REALTORS	HB 703	✓	
Bob Corrett	Bozeman Chamber	HB703	✓	
Ted Rollins	ASARCO, INC	HB 703	✓	
Barbara Archer	Women's Lobbyist Fund	HB703		X
Jan Cool	Exxon	703	✓	
Phil Campbell	Mont. El. Assoc.	703		X
Janelle Fallan	MT. Petroleum Assoc	703	✓	
Bryan Enderle	Missoula Chamber of Com	703	✓	
George L Bennett	NORTHERN BORDER	703	X	
Dennis Burr	MONTAX	703	X	
Bill Merrifield	CHAMPION INT'L	703	X	
Kenneth Peres	Montana Alliance	703		✓
Jim Mockler	MT. Coal Council	703	✓	
Marna Langley	Montana Mining Assn.	703	✓	

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 10, 1987

The sixty-second meeting of the Senate Taxation Committee was called to order at 8:00 a.m. on April 10, 1987 by Chairman George McCallum in Room 413/415 of the state Capitol.

ROLL CALL: All committee members were present.

DISPOSITION OF HB 703: Senator Crippen furnished the committee with a copy of an amendment to this bill, which is attached as Exhibit 1. He asked Mr. Anderson to comment on the amendments.

George Anderson said the proponents have proposed amendments to the bill that will make it more palpable as far as the legislature is concerned. The amendment would impose a tax of 7% on those particular corporations that are subject to world-wide apportionment and eligible to make a water's edge election, instead of 6 3/4%. Also, on page 5, line 3, eighty-five would be amended to eighty. On foreign dividends, foreign income, the bill originally proposed that 15% would be brought back in to be taxable. This would amend that to provide 20% be brought back into the state to be taxable. The reason for this change is the Tax Reform Act of 1986 changed that from 85% to 80%. He has also proposed on page 6, that section 7 be struck. He is hopeful these amendments would make the Department of Revenue more in favor of the bill.

John LaFaver said the impact of HB 703 is about $4 million per year. We have analyzed these proposed amendments and they are worth about $247,000. From a financial standpoint, we do not find this as much of a compromise.

George Anderson said he has come up with a figure of $900,000.

John LaFaver said Mr. Anderson continues to under-estimate the impact of these amendments.

Senator Halligan asked what was the impact of the sub-committee's work. Senator Brown said we were working with a different tax rate then.

Senator Halligan asked Senator Crippen why he would not choose to use the bill that the subcommittee worked so hard on. What is wrong with using the base that you worked with as the unitary approach.

Senator Crippen said the subcommittee came up with a compromise. That is still in SB 307, a separate bill. We can use HB 703 or SB 307. He was asked to present these amendments as a compromise.

Senator Eck said we came in here committed to do something. Since there is so much argument about how much this is going to cost, then maybe we should put a 5% surcharge on it, and have it sunset in two years.

Dan Bucks said there is no impact from this until 1989.

Senator Crippen made a motion to adopt the amendments presented and attached as Exhibit 1.

Senator Neuman would speak against the motion because it costs too much.

Senator Halligan made a substitute motion to amend into HB 703 the subcommittee's work, that we know what the impact will be, from SB 307. The substitute motion failed 4-8, see attached roll call vote.

Senator Eck would move that a 5% surcharge be added in 1989 to sunset at the end of 1989. It would be a 5% surcharge for that taxable year of 1989 on corporation income tax or corporation license tax.

Senator Eck said this would give assurance of getting this thing through and yet it will not cost the general fund $3.5 million.

Senator Eck's motion carried 7-5, see attached roll call vote.

Senator Crippen's original motion was considered and the motion carried with Senator Halligan opposed.

Senator Crippen would move the bill as amended. The motion carried 8-4, see attached roll call vote.

FURTHER CONSIDERATION OF HB 743: Senator Eck made a motion to amend HB 743 from one year to 18 months. It would be well over two years for the actual redemption period.

ROLL CALL

TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 4-10-87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR NEUMAN	✓		
SENATOR SEVERSON	✓		
SENATOR LYBECK	✓		
SENATOR HAGER	✓		
SENATOR MAZUREK	✓		
SENATOR ECK	✓		
SENATOR BROWN	✓		
SENATOR HIRSCH	✓		
SENATOR BISHOP	✓		
SENATOR HALLIGAN, VICE CHAIRMAN	✓		
SENATOR McCALLUM, CHAIRMAN	✓		

Each day attach to minutes.

Amend House Bill No. 703, 3rd Reading Copy

1. Title, lines 8 and 9.
Following: "METHOD" on line 8
Strike: ", THE NEW INVESTMENT TAXPAYER ELECTION,"

2. Title, line 10.
Following: "MCA;"
Insert: "IMPOSING A 7% TAX RATE ON CORPORATIONS SUBJECT TO WORLD-WIDE APPORTIONMENT AND ELIGIBLE TO MAKE A WATER'S-EDGE ELECTION; AMENDING SECTION 15-31-121, MCA;"

3. Page 5, line 3.
Strike: "Eighty-five"
Insert: "Eighty"

4. Page 6, lines 1 through 9.
Following: "7." on line 1
Strike: remainder of line 1 through end of line 9
Insert: "Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax -- minimum tax. (1) ~~The~~ Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 3/4% of all net income for the taxable period. The rate set forth in this ~~part~~ subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) For a taxpayer that is subject to world-wide apportionment and eligible to make a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period, whether or not the taxpayer makes the water's-edge election.

~~(2)~~ (3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.""

5. Page 6, lines 11 and 13.
Following: "through"
Strike: "7"
Insert: "6"

jhl/hb703sam.txt(dw3)

SENATE TAXATION
EXHIBIT NO. 1
DATE 4-10-87
BILL NO. H.B. 703

Anderson

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date April 10, 1987 Bill No. HB 703 Time 8:35 A.M.

NAME	YES	NO
SENATOR CRIPPEN		✓
SENATOR NEUMAN	✓	
SENATOR SEVERSON		✓
SENATOR LYBECK	✓	
SENATOR HAGER		✓
SENATOR MAZUREK		✓
SENATOR ECK		✓
SENATOR BROWN	✓	
SENATOR HIRSCH		✓
SENATOR BISHOP		✓
SENATOR HALLIGAN, VICE CHAIRMAN	✓	
SENATOR McCALLUM, CHAIRMAN		✓

Aggie Hamilton
Secretary

Senator George McCallum
Chairman

Motion: Substitute Motion - Senator Halligan - to amend into HB 703 the subcommittee's work from SB 307. The motion failed 4-8.

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date April 10, 1987 Bill No. HB 703 Time 8:37 A.M.

NAME	YES	NO
SENATOR CRIPPEN	✓	
SENATOR NEUMAN	✓	
SENATOR SEVERSON		✓
SENATOR LYBECK	✓	
SENATOR HAGER	✓	
SENATOR MAZUREK		✓
SENATOR ECK	✓	
SENATOR BROWN	✓	
SENATOR HIRSCH		✓
SENATOR BISHOP		✓
SENATOR HALLIGAN, VICE CHAIRMAN	✓	
SENATOR McCALLUM, CHAIRMAN		✓

Aggie Hamilton
Secretary

Senator George McCallum
Chairman

Motion: Senator Eck's motion that a 5% surcharge be added in 1989 to sunset at the end of 1989. The motion carried 7-5.

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date April 10, 1987 Bill No. HB 703 Time 8:49 A.M.

NAME	YES	NO
SENATOR CRIPPEN	✓	
SENATOR NEUMAN		✓
SENATOR SEVERSON	✓	
SENATOR LYBECK		✓
SENATOR HAGER	✓	
SENATOR MAZUREK	✓	
SENATOR ECK	✓	
SENATOR BROWN		✓
SENATOR HIRSCH	✓	
SENATOR BISHOP	✓	
SENATOR HALLIGAN, VICE CHAIRMAN		✓
SENATOR McCALLUM, CHAIRMAN	✓	

Aggie Hamilton
Secretary

Senator George McCallum
Chairman

Motion: Senator Crippen's motion that HB 703 BE CONCURRED IN AS AMENDED. The motion carried 8-4.

STANDING COMMITTEE REPORT

SENATE

SCRHB703.SCR

April 10, 1987

MR. PRESIDENT

We, your committee on Taxation

having had under consideration House Bill No. 703

third reading copy (blue color)

PROVIDE FOR WATER'S-EDGE UNITARY COMBINATION METHOD OR NEW INVESTMENT CHOICE

GILBERT (THAYER)

Respectfully report as follows: That House Bill No. 703

BE AMENDED AS FOLLOWS:

1. Title, lines 8 and 9.
Following: "METHOD" on line 8
Strike: ", THE NEW INVESTMENT TAXPAYER ELECTION,"

2. Title, line 10.
Following: "MCA;"
Insert: "TO IMPOSE A 7% TAX RATE ON CORPORATIONS SUBJECT TO WORLD-WIDE APPORTIONMENT AND ELIGIBLE TO MAKE A WATER'S-EDGE ELECTION; TO IMPOSE A 5% SURCHARGE ON THE CORPORATE LICENSE OR INCOME TAX FOR TAX YEAR 1988; AMENDING SECTION 15-31-121, MCA;"

3. Page 5, line 3.
Strike: "Eighty-five"
Insert: "Eighty"

4. Page 6, lines 1 through 9.
Following: "7." on line 1
Strike: remainder of line 1 through end of line 9
Insert: "Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax -- minimum tax--surtax. (1) ~~The~~ Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 3/4% of all net income for the taxable period. The rate set forth in this ~~part~~ subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

CONTINUED

Chairman.

April 10, 1987

(2) For a taxpayer that is subject to world-wide apportionment and eligible to make a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period, whether or not the taxpayer makes the water's-edge election.

~~(2)~~ (3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.

(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add as a surtax for tax year 1988, 5% of the tax liability, and the amount so derived at is the amount due the state.""

5. Page 6, lines 11 and 13.
Following: "through"
Strike: "7"
Insert: "6"

6. Insert: "NEW SECTION." preceding "Section" in the following locations:
Page 1, line 14.
Page 2, line 1.
Page 3, lines 9 and 16.
Page 4, line 11.
Page 5, line 16.
Page 6, lines 10,15,19, and 25.

AND AS AMENDED,
BE CONCURRED IN

CORRECTED COPY

Senator McCallum

CORRECTED COPY

4141055p.cwr

COMMITTEE OF THE WHOLE AMENDMENT

4-14-87
DATE

SENATE

10:55
TIME

MR. CHAIRMAN: I MOVE TO AMEND House Bill No. 703

third reading copy (blue Color) as follows:

AMEND TAXATION STANDING COMMITTEE REPORT OF APRIL 10, 1987.

1. Amendment no. 1, in Insert.
Following: "TO IMPOSE A"
Strike: "5%"
Insert: "4%"

2. Amendment no. 4, Section 15-31-121 (4).
Following: "add as a surtax"
Strike: " 5% "
Insert: " 4% "

ADOPT
REJECT

Senator Eck

411830n.cwo

COMMITTEE OF THE WHOLE AMENDMENT

4-11-87
DATE

8:30
TIME

MR. CHAIRMAN: I MOVE TO AMEND House Bill No. 703

third reading copy (blue Color) as follows:

AMENDING TAXATION STANDING COMMITTEE REPORT, DATED 4-10-87

1. Amend the second amendment's inserted material.
Following: "CORPORATIONS"
Strike: "SUBJECT TO WORLD-WIDE APPORTIONMENT AND ELIGIBLE TO MAKE"
Insert: "MAKING"

2. Amend the fourth amendment's changes to 15-31-121.
Following: "taxpayer" on the first line in subsection (2)
Strike: "that is subject to world-wide apportionment and eligible to make"
Insert: "making"
Following: "period" on the fifth line of subsection (2)
Strike: ", whether or not the taxpayer makes the water's-edge election"

ADOPT
REJECT

Senator Thayer

HOUSE BILL NO. 703

INTRODUCED BY GILBERT, THAYER, IVERSON, HIRSCH, MANUEL, CRIPPEN, LYNCH, J. BROWN, D. BROWN, SANDS, TVEIT, C. SMITH, WALLIN, POULSEN, BENGTSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE CORPORATE LICENSE OR INCOME TAX AND TO ALLOW CORPORATE LICENSE OR INCOME TAXPAYERS TO APPORTION INCOME FOR CORPORATE LICENSE OR INCOME TAX PURPOSES UNDER THE WATER'S-EDGE UNITARY COMBINATION METHOD~~,--THE-NEW--INVESTMENT TAXPAYER--ELECTION,~~ OR CONTINUE TO FILE UNDER CURRENT LAW AS PROVIDED FOR IN TITLE 15, CHAPTER 31, MCA; TO IMPOSE A 7 PERCENT TAX RATE ON CORPORATIONS ~~SUBJECT--TO--WORLDWIDE APPORTIONMENT-AND-ELIGIBLE-TO--MAKE~~ MAKING A WATER'S-EDGE ELECTION; TO IMPOSE A 5 4 PERCENT SURCHARGE ON THE CORPORATE LICENSE OR INCOME TAX FOR TAX YEAR 1988; AMENDING SECTION 15-31-121, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Affiliated corporation" means a United States parent corporation and any subsidiary of which more than 50% of the voting stock is owned directly or indirectly by another corporate member of the water's-edge combined group.

(2) "United States" means the 50 states of the United States and the District of Columbia.

(3) "Water's-edge combined group" means all corporations or entities included in the election of a taxpayer under [section 2].

NEW SECTION. Section 2. Water's-edge election. Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

(1) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in sections 1501 through 1505 of the Internal Revenue Code that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1), the 80% stock ownership requirements of section 1504 of the Internal Revenue Code must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

(2) domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code;

(3) export trade corporations, as described in sections 970 and 971 of the Internal Revenue Code;

(4) foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code;

(5) a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States.

NEW SECTION. Section 3. Apportionment factors. For purposes of [section 2(1) and (5)], the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

NEW SECTION. Section 4. Water's-edge election period -- consent. (1) A water's-edge election may be made by a

taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter subsequent to the water's-edge election is considered to have consented to the election.

(2) Each water's-edge election must be for 3-year renewable periods, except as follows:

(a) No water's-edge election may be made for an income year beginning before [the effective date of this act].

(b) A water's-edge election may be changed by a taxpayer prior to the end of each 3-year period only with the permission of the department of revenue. In granting a change of election, the department shall impose reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

NEW SECTION. Section 5. Treatment of dividends. For purposes of [sections 1 through 6], dividends must be treated as follows:

(1) Dividends received from corporations incorporated outside the United States, to the extent taxable, are considered income subject to apportionment.

(2) The after-tax net income of United States

corporations excluded from eligibility as affiliated corporations under [section 2(1)] and possession corporations described in sections 931 through 934 and 936 of the Internal Revenue Code are considered dividends received from corporations incorporated outside the United States.

(3) Amounts included in income under sections 951 through 962 and 964 of the Internal Revenue Code are considered dividends from corporations incorporated outside the United States.

(4) ~~Eighty-five~~ EIGHTY percent of all dividends apportionable under this section must be excluded from income subject to apportionment.

(5) "Deemed" distributions, as set forth in section 78 of the Internal Revenue Code, and corresponding amounts with respect to dividends considered received under subsection (2) of this section must be excluded from the income of the water's-edge combined group.

(6) The dividends apportionable under this section are in lieu of any expenses attributable to dividend income.

(7) A dividend from a corporation required to be combined in the water's-edge combined group must be eliminated from the calculation of apportionable income.

NEW SECTION. Section 6. Domestic disclosure spreadsheet. The department of revenue may require taxpayers

making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

~~Section 7. New investment taxpayer election. Notwithstanding any other provisions of law, if a taxpayer subject to the taxes imposed under this chapter adds to its Montana property and/or payroll by $1 million over the previous tax year, the taxpayer may apportion its income on a separate company reporting basis for a period of 5 tax years or any part thereof. This election does not affect how corporations affiliated with the electing taxpayer file their Montana corporate license or income tax returns.~~

SECTION 7. SECTION 15-31-121, MCA, IS AMENDED TO READ:

"15-31-121. Rate of tax -- minimum tax -- surtax. (1) ~~The~~ Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 3/4% of all net income for the taxable period. The rate set forth in this ~~part~~ subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on

or after February 28, 1971.

(2) For a taxpayer ~~that--is--subject--to--worldwide apportionment--and--eligible--to--make~~ MAKING a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period~~,--whether--or--not--the--taxpayer--makes--the water's-edge-election.~~

~~(2)~~(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.

(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add as a surtax for tax year 1988, ~~5%~~ 4% of the tax liability, and the amount so derived is the amount due the state."

NEW SECTION. Section 8. Codification instruction. Sections 1 through ~~7~~ 6 are intended to be codified as an integral part of Title 15, chapter 31, part 3, and the provisions of Title 15, chapter 31, part 3, apply to sections 1 through ~~7~~ 6, except as otherwise provided.

NEW SECTION. Section 9. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 10. Severability. If a part of

this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Applicability. This act applies to taxable years beginning after December 31, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB703, Reference copy.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to clarify the corporate license or income tax and to allow corporate license or income taxpayers to apportion income for corporate license or income tax purposes under the water's-edge unitary combination method, or continue to file under current law as provided in Title 15, Chapter 31, MCA; to impose a 7 percent tax rate on corporations making a water's edge election; to impose a 4 percent surcharge on the corporate license or income tax for tax year 1988; and providing an applicability date.

ASSUMPTIONS:

1. The Revenue Estimating Advisory Council's estimates of corporate license tax collections provide the basis for comparison.
2. Corporate license tax collections will be $53,063,000 in FY88 and $58,995,000 in FY89.
3. Financial institutions will pay 11.57 percent of the total tax under current law.
4. Based on a detailed examination of returns filed by multistate/multinational taxpayers in FY86, it is estimated the water's edge election would reduce their taxes by $3,431,700 when in effect for a full year. Less than 50 corporations would receive the bulk of the savings. The applicability date of the proposal, however, will affect only 60 percent of FY89 collections.
5. It is assumed that corporations that would be affected by the proposal do not change the timing or amount of their dividend payments in response to the delayed applicability date of the proposal. These reactions would increase the revenue impact of the proposal over the estimated amount.
6. The surtax applies to tax year 1988. 60% of the surtax will be collected in FY89 and 40% in FY90.

FISCAL IMPACT:

Revenue Impact:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Corporate License Tax	N/A	N/A	N/A	$58,995,000	$58,108,800	($ 886,200)*

*The effect represents 60 percent of a full year's impact as a result of the applicability date of the proposal.

David L Hunter DATE 4/16/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Bob Gilbert DATE
BOB GILBERT, PRIMARY SPONSOR

Fiscal Note for HB703, reference copy.

HB 703
#2

Fund Information:

	FY89		
	Current Law	Proposed Law	Difference
General Fund	$34,261,760	$ 33,625,115	($ 636,645)
Foundation Program	13,383,500	13,134,810	(248,690)
Debt Service Fund	5,888,740	5,779,317	(109,423)
Local Governments	5,461,000	5,569,558	108,558

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
The impact in FY90 is estimated to decrease revenues by $2,650,000, since the water's edge election will apply to a full year of returns and the surtax will apply to 40% of returns. In FY91, with no surtax applying, the proposal will decrease revenues by $3,432,000.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:
The proposal includes domestic international sales corporations (DISC's) in the definition of an affiliated group. Yet, these corporations are exempt from taxation by other sections of Title 15.